

Beaumont Police Department



Records Division

James P Singletary, Chief

Office (409)880-3817 * Fax (409)880-1010
P O Box 3827
Beaumont, TX 77704

February 12, 2019

Office of the Attorney General
Open Records Opinion Division
P O Box 12548
Austin, TX 78711-2548

Re: Request for Open Records Opinion case 2017030637 – MuckRock News

Dear Attorney General Paxton;

Enclosed please find a request for records, Exhibit A, which was received by the City of Beaumont on 01/31/19. The public copy of the report is available to the requestor. This request for an opinion is timely. We will supplement the 911 call within 5 business days.

The requestor in Exhibit A asks for the 911 call, police report, notes and supplement reports as well as photos, gun powder residue test results, witness statements and other information related to the case.

Exhibit B is the records that were requested. This incident ended in something other than conviction or deferred adjudication. Section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. See Gov't Code §§ 552.108(a)(2), .301(e)(1)(A). In this case the offender died so there was no case filed.

If you rule we should release this information there is a date of birth, license plate number, a gun serial number and a gun trace report that are confidential by law. Image Img_8748 shows the serial number of the gun. There is video showing the license plate of a car. We cannot redact an image or a video so we seek to withhold these.

Section 552.101 protects someone's date of birth from being released to the public. The Third Court of Appeals looked to the supreme court's rationale in Texas Comptroller of Public Accounts v. Attorney General of Texas, 354 S.W.3d 336 (Tex. 2010). Paxton v. City of Dallas, No. 03-13-00546-CV, 2015 WL 3394061. At *3(Tex.App.-Austin May 22, 2015, pet. Denied)(mem.op.). The Supreme Court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure. Texas Comptroller, 354 S.W.3d at 347-48. Based on Texas Comptroller, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov't Code § 552.130.

Section 552.108(b)(1) of the Government Code excepts from disclosure "an internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution ... if ... release of the internal record or notation would interfere with law enforcement or prosecution." Gov't Code § 552.108(b)(1); see City of Fort Worth v. Cornyn, 86 S.W.3d at 327 (Tex. App.-Austin 2002, no pet.) (Gov't Code 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). This includes firearm serial numbers that could be used on illegal firearms or falsely used in missing weapons reports. This would interfere with law enforcement.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes. Public Law number 112-55 state in pertinent part: During the current fiscal year and in each fiscal year thereafter, no funds appropriated under the Consolidated and Further Continuing Appropriations Act, 2012 or any other act may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the ATF or any information required to be kept by licenses pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of such section, except to: (1) a Federal, State, local, or tribal law enforcement agency, or a Federal, State, or local prosecutor . . . unless such disclosure of such data to an[] ... entity describe in (1) . . . of this proviso would compromise the identity of any undercover law enforcement officer or confidential informant, or interfere with any case under investigation; and no person or entity described in (1) . . . shall knowingly and publicly disclose such data; and all such data shall be immune from legal process, shall not be subject to subpoena or other discovery, shall be inadmissible in evidence, and shall not be used, relied on, or disclosed in any manner, nor shall testimony or other evidence be permitted base on the data, in a civil action in any State.

SUMMARY

It is the position of the City of Beaumont, Beaumont Police Department that:

- 1) This request for an opinion was made within the appropriate time as required by Chapter 552.
- 2) Section 552.108(a)(2) protects records for a case that ends in something other than conviction or deferred adjudication.
- 3) Section 552.101 protects someone's date of birth
- 4) Section 552.130 protects vehicle information
- 5) Section 552.108(b)(1) a firearm serial number because it could permit a private citizen to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety and generally undermine police efforts.
- 6) Section 552.101 along with Public Law number 112-55 prohibits release of the Firearm Trace System database.
- 5) A copy of this letter was sent to the party requesting the information.

The City of Beaumont respectfully requests a letter ruling from your office as to the enclosed information being excepted from disclosure. The information is being withheld pending your decision.

Thank you for your assistance.

Respectfully submitted,



Judy Hickman
Beaumont Police Records
Assistant Supervisor
City of Beaumont

CC: Alice Valkova
Muckrock News
Dept MR 66284
411A Highland Ave
Somerville, MA 02144-2516

1/31/2019

Mail - Judy.Hickman@BeaumontTexas.gov

2017030637

Filed via MuckRock.com

E-mail (Preferred): 66284-98974631@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/beaumont-police-department-8960/erin-brook-burris-66284/?uuid-login=0f621d9d-4d95-4c51-8a20-f4f27abd3ae5&email=Stephanie.Gandy%40beaumonttexas.gov#agency-reply

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For mailed responses, please address (see note):

MuckRock News

DEPT MR 66284

411A Highland Ave

Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

On Dec. 17, 2018:

A mistake was made in the date of the 911 call. The victim was shot December 28 2017 thus the 911 call would be on that date.

The victim passed away from the injury Jan 15, 2018

On Dec. 17, 2018:

To Whom It May Concern:

Pursuant to the Texas Public Information Act, I hereby request the following records:

Erin Brook Burris

DOB 10/31/1975

DOD 01/15/2018

911 call from 1-15-2018,

Police Report, notes and supplemental reports.

Scene Photos

a Gun Powder Residue Test Results

any witness statements and any other information relating to this case please.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,

alice valkova

Filed via MuckRock.com

E-mail (Preferred): 66284-98974631@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/beaumont-police-department-8960/erin-brook-burris-66284/?uuid-login=0f621d9d-4d95-4c51-8a20-f4f27abd3ae5&email=Stephanie.Gandy%40beaumonttexas.gov#agency-reply

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DEPT MR 66284

2/1/19 - Requested 911

<https://outlook.office.com/owa/?realm=beaumonttexas.gov&exsvurl=1&ll=cc=1033&modurl=0&nath=/mail/inbox/m>

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This is an external e-mail and not from the City of Beaumont. Please validate this e-mail before responding to or Opening/Clicking on any request from this external source. If you suspect this is a malicious e-mail - i.e. Phishing/Spoofing - forward it to IT.ExternalAlerts@BeaumontTexas.gov and delete it from your e-mail list.